Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:PEN:PIT:TL-N-2401-99
MAYost

date: APR 13 1999

to: Shirley Hoops, Team Coordinator - [redacted] Audit

thru: Ronald Karpuszka, Case Manager

from: Associate District Counsel, Pennsylvania District, Pittsburgh

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ubject: **Consents for Grantor Trusts**

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

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ISSUE

Whether a consent to extend the statute of limitations should be obtained both from a grantor trust and the grantor/taxpayer?

ADVICE GIVEN

It is not necessary to secure a consent from the grantor trust. The relevant return for the period of limitations is that of the taxpayer against whom any eventual deficiency in tax may be determined, i.e., the grantor/taxpayer. Thus, a consent to extend the period of limitations needs be secured only with respect to the tax liability of the grantor/taxpayer.

DISCUSSION

You want to protect the statute of limitations with respect to any deficiency in tax derived from any subsequent audit adjustments to be made to income and deductions passed through from a grantor trust to a [redacted] subsidiary. Attached to your request for advice is a Form 1041 filed by [redacted] ([redacted]) [redacted], an entity designated as a grantor trust. The fiduciary of the trust is shown as the [redacted]. The Form 1041 provides no figures for income or deductions, but on an attachment names the grantor as [redacted], EIN [redacted], and lists amounts for rental income and deductions for interest, depreciation, and fee amortization "taxable to the grantor".

Case law indicates that the relevant return for determining whether the period for assessment is expired under I.R.C. § 6501 is the return of the grantor, not the informational return filed by the trust. Lardas v. Commissioner, 99 T.C. 490 (1992); Bartol v. Commissioner, T.C. Memo 1992-141. Here, the trust return of [redacted] does not contain the information necessary to compute the tax liability of [redacted], the taxpayer to which the trust's tax items were passed through and against which any tax deficiency will be determined. A grantor trust is not subject to income tax. Instead, all of the income and deductions pertaining to a grantor trust must be taken into account by the grantor. I.R.C. §§ 671-677. The Service can only determine whether a deficiency exists after examining the return filed for [redacted]. For these reasons, a consent secured with respect to [redacted] will be effective to extend the limitations period regarding a subsequent deficiency in tax flowing from any audit adjustments to items passed through from the grantor trust. Bartol v. Commissioner, T.C. Memo 1992-141.

The above position is consistent with cases considering other types of "source" entities. See, Bufferd v. Commissioner, 113 S.Ct. 927 (1993)(pre-TEFRA, Subchapter S corporation); Siben v. Commissioner, T.C. Memo 1990-435, aff'd 930 F.2d 1034 (2d Cir. 1991)(pre-TEFRA partnership); and Stahl v. Commissioner, T.C. Memo 1990-320 and 96 T.C. 798 (1991)(complex trust).

Accordingly, a consent does not need to be secured from the grantor trust. A consent from the grantor corporation would be sufficient to extend the applicable statute of limitations. No special language is required on the Form 872.

If you have any questions, you can call Michael A. Yost, Jr. of this office at 644-3441.

EDWARD F. PEDUZZI, JR.
Associate District Counsel